IN THE COURT OF APPEALS OF IOWA

No. 6-121 / 94-1650

IN RE THE MARRIAGE OF THERESA ANN TOLLE AND BRIAN EDWARD TOLLE

FILED
AUG 30 1996
CLERK SUPREME COURT

Upon the Petition of
THERESA ANN TOLLE,

Petitioner-Appellee,

And Concerning
BRIAN EDWARD TOLLE,

Respondent-Appellant.

Appeal from the Iowa District Court for Shelby County, Leo F. Connolly, Judge.

The respondent appeals from various economic provisions of the parties' dissolution decree. **AFFIRMED AS MODIFIED AND REMANDED.**

Thomas J. Anderson of McMartin & Anderson, Harlan, for appellant.

Susan Larson Christensen of Larson, Childs, Hall & Christensen, P.C., Harlan, for appellee.

Considered by Cady, P.J., Streit, and Vogel, JJ.

CADY, J.

A husband appeals from the child support and property division portions of a decree for dissolution of marriage. We affirm as modified, and remand.

Brian and Theresa Tolle were married in 1976. Three children were born to the marriage: Jennifer May, born December 8, 1979, Nathan Allan, born February 18, 1983, and Heather Lynn, born November 3, 1984. Brian and Theresa were both thirty-eight years of age at the time of trial. Brian was employed at Iowa Beef Processing and earned approximately $26,000 annually. His net monthly wages were $1156. Theresa operated an office and home cleaning service, and had net income of $488 per month. Brian and Theresa owned a residence in Harlan, Iowa valued at $32,726 with equity of approximately $12,000. The Tolles also accumulated marital debt totaling $7734.29.

Following trial, the district court awarded Theresa physical care of the children while Brian was awarded liberal visitation. Brian was also ordered to pay $464 per month in child support, to be reduced as each child reached the age of majority. He was further ordered to maintain health and life insurance on the children. Theresa was awarded one child for purposes of the tax exemption and Brian was permitted to declare the other two children as dependents for tax purposes. The court awarded Theresa her 1987 Plymouth automobile and Brian was awarded his 1990 Chevrolet truck. The marital home was awarded to Theresa. Brian was awarded his one-half remainder interest in eighty acres of farmland he inherited from his father during the

marriage, which the court valued at $14,258. Brian was additionally ordered to pay the marital debt totaling $7734.29. Brian has appealed.

Brian contends the district court erred in ordering him to pay the entire amount of marital debt. He argues Theresa is capable of paying a portion of the debt because her net monthly earnings actually exceed $488. He next contends the court erred in awarding Theresa the marital home plus all equity. He maintains that even though his one-half remainder interest in the farmland was valued at over $14,000, the court failed to consider the entire parcel of farmland is subject to a debt of $65,000. He contends this inherited property should have been set aside to him and not considered in the division of marital property. Brian lastly argues he should not be held responsible for the payment of health and life insurance on the children in addition to paying $464 per month in child support. He asserts his child support obligation should be reduced to $300 per month.

I. Scope of Review

Our review is de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. Property Division

Parties to a marriage are entitled to a just and equitable share of the property accumulated through their joint efforts. *In re Marriage of Hass*, 538 N.W.2d 889, 892 (Iowa App. 1995). A variety of factors are considered in determining an equitable division including those identified by statute. *See* Iowa Code § 598.21(1)

(1995). An equitable division does not necessarily mean an equal share. *In re Marriage of Starcevic*, 522 N.W.2d 855, 857 (Iowa App. 1994). The division of marital debts inheres in the property division. *In re Marriage of Johnson*, 299 N.W.2d 466, 467 (Iowa 1980).

In making the property award, the trial court considered the greater percentage contribution by Theresa of her earnings to the payment of the family expenses and debts during the marriage. Although the financial contributions by a party to the marriage is a factor to consider in making a property award, it must not be considered in isolation from the other contributions to the marriage. *See* Iowa Code § 598.21(1)(c). All the contributions of each party should be considered in making a property award, including financial contributions. *See In re Marriage of Hass*, 538 N.W.2d at 892.

The trial court also considered the one-half remainder interest in the farm Brian inherited during the marriage in dividing the property. Generally, property inherited by a party during the marriage is not subject to a property division. Iowa Code § 598.21(2) (1995). It may be considered only if the failure to do so would be inequitable to the other party or the children. *Id.*

In this case, the trial court found the refusal to divide the inherited property would be inequitable because of the length of the marriage. The length of the marriage is often an important factor to consider in determining the equitable distribution of inherited property. *In re Marriage of Hass*, 538 N.W.2d at 892. Yet,

the length of the marriage has little impact in this case. The parties shared no benefits from the property during the marriage, and Brian may not enjoy any benefits for many years to come. Furthermore, there is a mortgage against the farm which currently exceeds the value of the farm. We are unable to find in our de novo review that refusal to consider Brian's future interest in the farm in making the property award would be inequitable.

Considering all the factors, and setting aside Brian's future interest in the farm to him, we conclude an equitable division of property requires Brian to receive approximately one-half of the equity in the home. We modify the trial court decree to give Brian a property award of $6000, payable after the last child is no longer subject to a child support obligation or the home is sold, whichever occurs first. Payment of the award shall be secured by a lien against the home, and shall accumulate interest at seven percent from the time the obligation becomes due and payable. *See Hunt v. Kinney*, 478 N.W.2d 624, 625 (Iowa 1991). We remand the case to the district court for entry of an order consistent with this opinion.

We otherwise affirm the division of property made by the district court. The amount of Theresa's net income for tax purposes has little impact on the division of property. Considering all the circumstances of the case, the division of the debts was equitable.

III. Child Support

The child support guidelines are strictly followed in determining a parent's child support. *State ex rel. Miles v. Minar,* 540 N.W.2d 462, 464 (Iowa App. 1995). In addition, an order for medical support is also generally required when a parent is eligible to participate in an employer provided health benefits plan. Iowa Code § 598.21(4)(a) (1995). The premium costs of the plan may be considered as a reason for varying from the child support guidelines if not deducted in comparing net monthly income. Child Support Guidelines, effective July 1, 1995; Iowa Code § 598.21(4)(a). Furthermore, the trial court may order other types of child support, including life insurance payable to the minor children. *In re Marriage of Mayfield,* 477 N.W.2d 859, 863 (Iowa App. 1991).

Brian claims his support obligation is excessive because he is also obligated to provide medical insurance and life insurance for the children. He asks that the cost of the insurance be considered as a reason to deviate downward from the guideline amount.

Our review of the record reveals the weekly cost of Brian's employer-provided health insurance is $8.49.[1] Moreover, this cost was deducted in determining Brian's net monthly income for purposes of applying the child support guidelines. Furthermore, the weekly cost of the life insurance is $6.10. This cost was also

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[1] Brian repeatedly argued in his brief the weekly cost was $80.49. This was based on a mistaken figure used by counsel for Theresa during one portion of her cross-examination of Brian. Brian's weekly pay stubs and his financial statement confirm the weekly cost was $8.49.

deducted in determining net monthly income. Consequently, there is no justification for deviating from the guidelines.

IV. Conclusion

In conclusion, we affirm the decree of the district court as modified by our opinion. We remand to the district court for entry of the property award to Brian. We do not retain jurisdiction. Costs divided equally.

AFFIRMED AS MODIFIED AND REMANDED.